

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 90359 June 9, 1992

JOHANNES RIESENBECK, petitioner,
vs.
THE HON. COURT OF APPEALS, and **JUERGEN MAILE**, respondents.

GRIÑO-AQUINO, J.:

This is a petition for review on *certiorari* to annul the decision dated April 21, 1989 of the Court of Appeals which dismissed for lack of merit the petition for *certiorari* against two (2) orders of Regional Trial Court Judge Teodoro K. Risos.

On July 25, 1988, petitioner Riesenbeck filed in the Regional Trial Court of Cebu, Branch 27, a complaint for consignment and damages against respondent Juergen Maile. On July 27, 1988, petitioner consigned and deposited with the Clerk of Court of the Regional Trial Court of Cebu the sum of P113,750. The private respondent subsequently filed a Manifestation Accepting Consignation and Motion to Dismiss dated August 1, 1988, wherein he stated, *inter alia*, that "*without necessarily admitting the correctness of obligation of plaintiff to defendant*, the latter hereby manifests to accept the said amount of P113,750 which is consigned by plaintiff, provided that the present complaint be dismissed outright with cost against plaintiff." (p. 14, CA *Rollo*.) The petitioner opposed the manifestation, respondent Maile filed an Answer with Special Defenses and Counterclaim. On August 23, 1988, petitioner filed his Answer to Counterclaim. Private respondent filed a rejoinder/reply to the petitioner's opposition.

Thereafter, on September 28, 1988, respondent Judge issued the first questioned order reading in part as follows:

After a thorough evaluation of the issues involved in the manifestation and the opposition thereto, the Court is of the opinion that there was a valid consignment, and defendant could legally accept the payment by consignment with reservation to prove damages and other claims as held by the Supreme Court in the case of *Sing Juco vs. Cuaycong*, 46 Phil. 81.

WHEREFORE the Clerk of Court of this Court is hereby ordered to deliver to defendant Juergen Maile the sum of P113,750.00 immediately, but the motion to dismiss is hereby in the meantime DENIED. (p.31, CA, *Rollo*.)

On November 11, 1988, Judge Risos denied petitioner's motion for reconsideration.

On November 18, 1988, petitioner filed a petition for *certiorari* in the Court of Appeals to annul and set aside the two orders of Judge Risos.

In a decision dated April 21, 1989, the Court of Appeals dismissed the petition for *certiorari*.

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution dated August 29, 1989.

In this petition for review, the petitioner raises the following issue: What is the effect on the petitioner's obligation to the private respondent of the latter's *acceptance with reservation* of the amount consigned by the petitioner?

Private respondent's acceptance of the amount consigned by the petitioner-debtor with a reservation or qualification as to the correctness of the petitioner's obligation, is legally permissible. There is authority for the view that before a consignment can be judicially declared proper, the creditor may prevent the withdrawal of the

amount consigned by the debtor, by accepting the consignment, even with reservations (Tolentino, Civil Code of the Phil., Vol. IV, 1973 Ed., p. 317, *citing* 3 Llerena 263).

In ruling that there was a valid consignment and that the respondent creditor could accept the same with a reservation of his damages and other claims, the Court of Appeals relied on the 1924 case of *Sing Juco vs. Cuaycong*, 46 Phil. 81. In that case, the defendants consigned in court the amount which they had received from the plaintiff as the price of sugar, the sale of which did not materialize. The defendants were given the alternative of delivering the sugar or returning the price per stipulation in the contract. We ruled that plaintiff's acceptance of the money consigned, unconditionally and without reservation, was a waiver of his other claims under the contract.

A sensu contrario, when the creditor's acceptance of the money consigned is conditional and with reservations, he is not deemed to have waived the claims he reserved against his debtor. Thus, when the amount consigned does not cover the entire obligation, the creditor may accept it, reserving his right to the balance (Tolentino, Civil Code of the Phil., Vol. IV, 1973 Ed., p. 317, *citing* 3 Llerena 263). The same factual milieu obtains here because the respondent creditor accepted with reservation the amount consigned in court by the petitioner-debtor. Therefore, the creditor is not barred from raising his other claims, as he did in his answer with special defenses and counterclaim against the petitioner-debtor.

As respondent-creditor's acceptance of the amount consigned was with reservations, it did not completely extinguish the entire indebtedness of the petitioner-debtor. It is apposite to note here that consignment is completed at the time the creditor accepts the same *without objections*, or, if he objects, at the time the court declares that it has been validly made in accordance with law. (Tolentino, Civil Code of the Phil., Vol. IV, 1973 Ed., p. 315.)

Since the lower court in this case declared on September 28, 1988 that there was a valid consignment by the petitioner, the latter cannot tenably argue that he is still the owner of the amount consigned and that he can still withdraw it.

The consignment has retroactive effect. The payment is deemed to have been made at the time of the deposit of the money in court, or when it was placed at the disposal of the judicial authority, *supra*. In this case, payment is considered made on July 27, 1988 when petitioner consigned and deposited with the respondent court the sum of P113,750.

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Cruz, Medialdea and Bellosillo, JJ., concur.